

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

KEMPER POINTE INVESTMENTS,  
LLC,

Plaintiff-Appellee,

vs.

DARLENE FAZIO,

CAROLYN H. ELLIS,

MARK D. KERSEY,

BRUCE D. JOHNS,

BARBARA R. JOHNS,

CHRISTINE L. SIKES,

STEPHEN L. GIBSON,

ERIN S. GIBSON,

JOHN B. GROVE,

OLGA GROVE,

LINDA KERSEY,

RICHARD SIKES,

GREGORY FRANCOIS,

and

PRISCILLA HEFFERNAN,

Defendants-Appellants,

and

PAMELA M. THOMAS

and

BLAKE DILULLO,

Defendants.

APPEAL NO. C-110770  
TRIAL NO. A-1104001

*JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Darlene Fazio, Carolyn Ellis, Mark Kersey, Bruce Johns, Barbara Johns, Christine Sikes, Stephen Gibson, Erin Gibson, John Grove, Olga Grove, Linda Kersey, Richard Sikes, Gregory Francois, and Priscilla Heffernan (“the guarantors”) appeal the trial court’s judgment that denied their motion to dismiss and granted Kemper Pointe’s motion for summary judgment. We affirm the judgment of the trial court.

The guarantors are members of the Charismatic Orthodox Church in St. Augustine, Florida (“Charismatic”). Charismatic executed three promissory notes with Johnson Mortgage Services (“Johnson”) for a loan in the amount of \$1,150,000. The guarantors each signed guaranty agreements with Johnson by which the guarantors jointly and severally agreed to guarantee Charismatic’s payment of the notes by the maturity date of December 14, 2008. Johnson assigned the notes and the guaranty agreements to Kemper Pointe. When Charismatic failed to pay the loan by the maturity date, Kemper Pointe filed a complaint against each of the guarantors for the amounts guaranteed.<sup>1</sup>

The guarantors filed a motion to dismiss under a theory of forum non conveniens. Kemper Pointe filed a motion for summary judgment. Following a hearing, the trial court denied the guarantors’ motion to dismiss and granted Kemper Pointe’s motion for summary judgment. The guarantors now appeal.

In their first assignment of error, the guarantors assert that the trial court abused its discretion when it did not dismiss the action under the doctrine of forum non conveniens. The guaranty agreements each contained a forum-selection clause that designated Cincinnati, Ohio, as the venue for actions regarding the guaranty agreements. Despite the clause in the agreements, the guarantors argued that

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<sup>1</sup> Kemper Pointe’s complaint included the defendants Pamela Thomas and Blake Dilullo, who were not properly served at the time of the summary judgment motion. Thomas and Dilullo are not parties to this appeal.

Florida was the proper venue because all the guarantors lived in Florida and the property that was the subject of the notes was in Florida. We conclude that the trial court did not abuse its discretion when it denied the guarantors' motion to dismiss under the doctrine of forum non conveniens. *See Chambers v. Merrell-Dow Pharmaceuticals, Inc.*, 35 Ohio St.3d 123, 519 N.E.2d 370 (1988); *Travelers Cas. & Sur. Co. v. Cincinnati Gas & Electric Co.*, 169 Ohio App.3d 207, 2006-Ohio-5350, 862 N.E.2d 201 (1st Dist.). The first assignment of error is overruled.

The guarantors' second assignment of error is that the trial court erred when it granted summary judgment to Kemper Pointe. The guarantors argue that there remained genuine issues of material fact. *See Civ.R. 56(C)*.

The guarantors, through the affidavit of Mark Kersey, one of the guarantors and the pastor of Charismatic, suggested that until the extent of Charismatic's liability for the notes was determined in a foreclosure action in Florida, the guarantors' liability could not be litigated. But the guarantors' obligations under the guaranty agreements were separate from the foreclosure action. The guarantors did not dispute that the guaranties had matured on December 14, 2008. Any speculation about what might occur with respect to the foreclosure action in Florida was too speculative to create a genuine issue of material fact.

The guarantors also challenged Kemper Pointe's documentary support for its claim that Johnson had assigned its rights in all of the guaranties to Kemper Pointe. But Charles Kubicki, manager of Kemper Pointe, stated in his affidavit that the guaranty agreements had been assigned to Kemper Pointe, and the agreements were attached to the affidavit. The guarantors presented no evidence to challenge Kubicki's assertion. We conclude that the trial court properly granted summary judgment to Kemper Pointe. The second assignment of error is overruled.

The final assignment of error is that the trial court erred when it calculated interest and attorney fees. This assignment of error is overruled. The interest and fees that were awarded were supported by the terms of the guaranty agreements.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.**

To the clerk:

Enter upon the journal of the court on June 27, 2012  
per order of the court \_\_\_\_\_.  
Presiding Judge